

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

John Doe,

Plaintiff,

v.

St. Olaf College,

Defendant.

Case No.: 18-cv-02689 (MJD/SER)

**BRIEF IN SUPPORT OF
CONTINUING REQUEST TO ALLOW
PLAINTIFF TO PROCEED USING A
PSEUDONYM**

INTRODUCTION

Pursuant to this Court's Order, issued at Scheduling Conference held on December 13, 2018, Plaintiff submits this memorandum regarding the continued propriety of proceeding under a pseudonym in light of the Rice County District Court's Order granting in part and denying in part Plaintiff's motion to dismiss the criminal charges against him for lack of probable cause.

FACTUAL BACKGROUND

By a Complaint filed on January 4, 2018, Plaintiff was charged with four (4) counts: Count 1 – 3rd Degree Criminal Sexual Conduct – Force or Coercion (Minn. Stat. § 609.344.1(c)); Count 2 – 3rd Degree Criminal Sexual Conduct – Victim Mentally Impaired / Helpless (Minn. Stat. § 609.344.1(d)); Count 3 – 4th Degree Criminal Sexual Conduct – Force or Coercion (Minn. Stat. § 609.345(1)(c)); and Count 4 – 4th Degree Criminal Sexual Conduct - Victim Mentally Impaired / Helpless (Minn. Stat. § 609.345.1(d)).

On June 27, 2018, Plaintiff filed a motion to dismiss for lack of probable cause in the state court criminal proceeding. Written submissions on this were filed with the state district court in the fall of 2018, with the state district court taking the matter under advisement on December 20, 2018. By an Order served on Plaintiff on January 23, 2019, the state district granted in part and denied in part Plaintiff's motion, dismissing Counts 1 and 3 and denying the motion to dismiss Counts 2 and 4. The state criminal proceeding is scheduled for a plea hearing on February 27, 2019, with a trial date expected to be issued at that hearing.

Plaintiff submits the instant Memorandum in support of his request that he be allowed to continue proceeding under a pseudonym.

ARGUMENT

Pleadings are generally required to "include the names of all the parties." Fed. R. Civ. P. 10(a). However, many federal courts have permitted parties to proceed anonymously when special circumstances arise. Generally, courts allow the use of pseudonyms "[w]here it is necessary...to protect a person from harassment, injury, ridicule or personal embarrassment...." *U.S. v. Doe*, 665 F.2d 920, 922 (9th Cir. 1977) (*citing U.S. v. Doe*, 556 F.2d 391, 393 (6th Cir. 1977)). "The decision whether or not to allow the use of pseudonyms based on a need for anonymity in a particular lawsuit is left to the discretion of the trial court." *Heather K. by Anita K. v. City of Mallard, Iowa*, 887 F. Supp. 1249, 1255 (N.D. Iowa 1995) (allowing use of a pseudonym to protect plaintiff's privacy where plaintiff challenged open burning ordinance due hazardous affect on her health). Neither the Supreme Court nor the Eighth Circuit have provided

guidance on when a pseudonym may be used. *Roe v. St. Louis University et al.*, No. 4:08-cv-1474, 2009 WL 910738, at *3 (E.D. Mo. April 2, 2009). However, both courts have long-allowed plaintiffs to proceed under pseudonyms. *See Heather K.*, 1255 (citing *Roe v. Wade*, 410 U.S. 113 (1973); *Doe v. Poelker*, 497 F.2d 1063 (8th Cir. 1974)).

Generally, Courts “must balance the need for anonymity against the general presumption that parties’ identities are public information and the risk of unfairness to the opposing party.” *Does I Thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000). This balancing test generally allows plaintiffs to use pseudonyms when: (1) “identification creates a risk of retaliatory physical or mental harm;” (2) “anonymity is necessary to preserve privacy in a matter of sensitive and highly personal nature;” and (3) “the anonymous party is compelled to admit [his or her] intention to engage in illegal conduct, thereby risking criminal prosecution.” *Id.*

Plaintiff contends that the balancing test at issue continues to fall in favor of allowing him to proceed under an assumed name. While two criminal charges remain against Plaintiff, Plaintiff anticipates that the remaining two (2) charges will be dropped in the near future because the claims against Plaintiff, while having enough factual support to survive the low standard of probable cause, lack the factual support to prove Plaintiff’s guilt beyond a reasonable doubt. And, as in all criminal proceedings, Plaintiff even with charges currently remaining, is presumed innocent and remains so until proven guilty.

If, as Plaintiff anticipates, the remaining charges against him are dismissed or he is found not guilty, he will have the right under state law, and will assert that right, to have

the record of the charges against him expunged and removed from the public record. See Minn. Stat. § 609A.02. Subd. 3(1)¹. Under Minnesota law, dismissal of the charges prior to trial would be an outcome resolved in Plaintiff's favor, as would being found not guilty. *See State v. A.S.R.*, 906 N.W.2d 526 (Minn.App. 2017) ("Because the prosecutor dismissed the charge against A.S.R. without any admission or finding of guilt, the district court properly determined that A.S.R.'s cases was resolved in his favor.") Where the criminal proceedings are resolved in the defendant's favor, there is a presumption in favor of granting expungement. Minn. Stat. § 609A.03, Subd. 5(b).

If, as Plaintiff believes, the remaining charges will be resolved without a finding or admission of guilt, forcing Plaintiff to proceed under this true name in this proceeding simply because those criminal charges remain for the time being will render his right to have those criminal records expunged essentially meaningless due to the notoriety of having his name disclosed as part of this proceeding.

¹ "(a) A petition may be filed under section 609A.03 to seal all records relating to an arrest, indictment or information, trial, or verdict if the records are not subject to section 299C.11, subdivision 1, paragraph (b), and if:

(1) all pending actions or proceedings were resolved in favor of the petitioner. For purposes of this chapter, a verdict of not guilty by reason of mental illness is not a resolution in favor of the petitioner. For the purposes of this chapter, an action or proceeding is resolved in favor of the petitioner, if the petitioner received an order under section 590.11 determining that the petitioner is eligible for compensation based on exoneration..."

CONCLUSION

Because the totality of the circumstances continue to weigh heavily in Plaintiff's favor, the Court should allow him to continue to proceed under the pseudonyms John Doe.

Dated: January 30, 2019

MCGRAW LAW FIRM, P.A.

/s/Beau D. McGraw

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